



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

MARK A. ALLEN, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 78-1743  
 )  
 CENTRAL INTELLIGENCE AGENCY, )  
 et al., )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

DEFENDANT CENTRAL INTELLIGENCE AGENCY'S  
RESPONSE TO PLAINTIFF'S REQUESTS FOR ADMISSIONS

Pursuant to rule 36 of the Federal Rules of Civil Procedure, Defendant Central Intelligence Agency hereby responds to the plaintiff's request for admissions.

1. Information presently withheld in CIA Document No. 509-803 already has been made available in officially released government documents.

RESPONSE. Deny, except to admit that most of the substantive information in Document No. 509-803 is contained in other documents which have been released to the public. In Document No. 509-803 much of the substantive information is inextricably mixed with operational details which, if disclosed, would compromise intelligence sources and methods.

2. Most of the information withheld in CIA Document 509-803 is contained in the documents attached to the memorandum of plaintiff Mark A. Allen filed in this case on February 23, 1981.

RESPONSE. Deny, except to admit that some of the substantive information withheld in Document No. 509-803

concerns incidents mentioned in documents attached to the memorandum of the plaintiff.

3. Release of the information excised in Document 509-803 would no more tend to cause identifiable damage to national security than did disclosure of the information in the officially released documents attached to the memorandum of plaintiff Mark A Allen filed in this case on February 23, 1981.

RESPONSE. Deny. Release of the information excised in Document No. 509-803 could reasonably be expected to do damage to national security in a manner that has not yet occurred.

4. Release of the materials withheld in Document 509-803 will not hasten the identification of intelligence sources and methods.

RESPONSE. Deny. Release of materials withheld in Document No. 509-803 will disclose information about intelligence sources and methods.

5. Under the auspices of Exemption 3 and 50 U.S.C. §403g, the CIA continues to withhold the names and identities of CIA officials and components that are publicly known.

RESPONSE. Deny, however I have discovered that the name of the originator of the document, Mr. Raymond Rocca of the CI Staff, had been deleted when this document was first released in response to FOIA requests in June 1976. Since that time Mr. Rocca has been publicly acknowledged, and his name is no longer properly withholdable. A modified version of the page of the document on which Mr. Rocca's name appears will be released to the plaintiff. One other CIA staff employee's name has been deleted from the document.

6. Prior to November 12, 1980, Document 509-803 did not show on its face:


(a) the name of the official holding original classification authority who classified the document;

(b) the date or event for declassification or declassification review;

(c) the office of origin.

RESPONSE. Deny, except to point out that Executive Order 12065, the first such Executive Order to designate and define the authority inherent in "original classification authority," was not in effect until 1 December 1978. Document No. 509-803 was originated in January 1964. The document appears to have been stamped "SECRET" at the time of its origin, and it has been treated as classified by the CIA, the Warren Commission and the various Congressional committees, all of which have had physical access to the document. In 1964 the originator or the signer determined the classification level of such documents. The originator of the document was Mr. Rocca, who's name appears on the document. Mr. Rocco's office is identified as the CI Staff. Mr. Richard Helms is the signer of the document, and he is identified as the Deputy Director for Plans. A date for the next scheduled declassification review was recorded on the document on 9 February 1981, during the most recent classification review.

I hereby declare under penalty of perjury that the foregoing is true and correct. Executed this 27<sup>th</sup> day of April 1981.

  
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LOUIS J. DUBE  
Information Review Officer,  
Directorate of Operations,  
Central Intelligence Agency,  
Washington, DC 20505

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DEFENDANT CENTRAL INTELLIGENCE AGENCY'S  
ANSWERS TO PLAINTIFF'S INTERROGATORIES

Pursuant to rule 33 of the Federal Rules of Civil Procedure, Defendant Central Intelligence Agency hereby responds to the plaintiff's interrogatories.

1. What is the date of the most recent classification of CIA Document No. 509-803?

ANSWER. The date of the most recent classification certification of CIA Document No. 509-803 is 9 February 1981.

2. What is the date or event set for declassification or declassification review?

ANSWER. The date set for the next scheduled declassification review is 9 February 1991.

3. At what level is the document currently classified?

ANSWER. Document No. 509-803 is currently classified at the level of "SECRET."

4. What does the document show as the office of origin?

ANSWER. The document shows "CI" as the office of origin.

5. Did the CIA conduct a balancing to determine whether the public interest in disclosure of the withheld portions of the document outweighs the damage to national security which might reasonably be expected from such disclosure?

ANSWER. The CIA did not conduct a balancing to determine whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure.

6. If the answer to the above interrogatory is no, why did the CIA not engage in the balancing test provided by §3-303 of Executive Order 12065? If the answer to the above interrogatory is yes, what were the factors which weighed in favor of the public interest in disclosure?

ANSWER. The balancing test provided by §3-303 of Executive Order 12065 was not employed because a determination was made that the circumstances warranting such a balancing did not exist. The Agency has repeatedly stated that most of the substantive information contained in Document No. 509-803 is contained in other documents which have been released to the public. The release of the remaining withheld information would add little, if any, meaningful substantive information to the information already on the public record. The House Committee on Assassinations, after reviewing many Agency records including Document no. 509-803, observed on line 24 on the page marked 255 of plaintiff's Attachment 1, "the Committee did not conclude that the CIA's handling of information derived from sensitive methods and sources, in fact, substantially impeded the progress of the Warren Commission..."

7. The unexpurgated copy of Document No. 509-803 which was provided plaintiff after the recent Court of Appeals remand in this case bears a stamp which indicates the level of classification on the face of the document:

(a) when was that stamp placed on the document?

(b) who placed it on the document?

(c) did the person who placed the stamp on the document have original classification authority?

ANSWER. 7(a) An unexpurgated copy of Document No. 509-803 has not been provided plaintiff by CIA. The partially expurgated copy of Document No. 509-803 has, however, been provided to the plaintiff. It bears the classification stamp "SECRET" on the top and bottom of the pages of the document. I did not personally witness the classification stamps being placed on the document. The stamps were, to the best of my knowledge, on the document when retrieved from the Agency records system. The normal procedure for placing classification stamps of documents in the Directorate of Operations of CIA is that the clerical personnel who type such documents will normally apply the classification stamps after having completed typing the document. The document originator or signer would normally determine the level of classification. I know of no reason to doubt that this document was stamped "SECRET" at the time it was typed and before it was signed.

7(b) The answer for 7(a) applies.

7(c) The individual who placed the stamp on the document is not identifiable from the document. However, in 1964 when this document was originated, the individual signing the

document would normally be recognized as an original classification authority. In this case, the document was signed by Mr. Richard Helms, Deputy Director of Plans. Mr. Helms had such authority.

8. In its in camera submission to the Court, does the CIA rely on the legal theory that there is a difference between unofficial speculation and official acknowledgment of government action?

ANSWER. In its in camera submission, the CIA does rely, in part, on a rationale which distinguishes between non-official speculation and official acknowledgment of the substance of official government records.

9. Does the CIA contend (a) that release of the information withheld in the document would constitute official acknowledgment of its actions, and (b) that such acknowledgment will result in damage to the national security beyond that which has resulted from prior revelations of said actions?

ANSWER. CIA contends that release of the withheld information in Document No. 509-803, in the form in which it appears in the document, would disclose intelligence sources and methods and also could reasonably be expected to cause damage to the national security, in a manner which has not yet occurred.

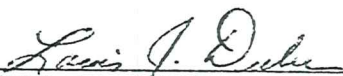
10. Please summarize all legal theories on which the CIA has relied in its in camera submissions to the Court.

ANSWER. The legal theories relied upon in CIA's in camera submissions are the same ones relied upon in its



unclassified submission filed in open court. Briefly, the withheld information, if released, would disclose information concerning intelligence sources and methods and information the disclosure of which could reasonably be expected to damage the national security. Given those conclusions, the information is exempt from release pursuant to Freedom of Information Act exemptions (b)(1) and (b)(3). The only addition to the presentation in the in camera submissions is the information which explains what intelligence sources and methods are disclosed and how damage is expected to result from the unauthorized disclosure of the information withheld as exempt from release.

I hereby declare under penalty of perjury that the foregoing is true and correct. Executed this 27<sup>th</sup> day of April 1981.

  
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LOUIS J. DUBE  
Information Review Officer,  
Directorate of Operations,  
Central Intelligence Agency,  
Washington, DC 20505

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NOTICE OF FILING

Defendants file herewith an expurgated copy of an affidavit executive by Gerald L. Liebenau, Information Review Officer for the Directorate of Operations of the Central Intelligence Agency. An unexpurgated copy of this affidavit has previously been filed in camera with the Court.

Respectfully submitted,

*Charles F. C. Ruff*  
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CHARLES F. C. RUFF  
United States Attorney

*Royce C. Lambirth*  
\_\_\_\_\_  
ROYCE C. LAMBERTH  
Assistant United States Attorney

*Dennis A. Dutterer*  
\_\_\_\_\_  
DENNIS A. DUTTERER  
Assistant United States Attorney

~~SECRET~~

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AFFIDAVIT

GERALD L. LIEBENAU, being first duly sworn, deposes and says:

1. I am the Information Review Officer for the Directorate of Operations (DO) of the Central Intelligence Agency (CIA). My responsibilities include the review of DO documents which are the object of Freedom of Information Act (FOIA) requests to and litigation against the CIA to ensure that details made regarding the disposition of such documents, pursuant to provisions of the FOIA, are proper. The statements made herein are based upon my knowledge, upon information made available to me in my official capacity, upon advice and guidance from the Office of General Counsel of the CIA and upon conclusions reached in accordance therewith.

2. Through my official duties, I have become acquainted with this case since the ruling of the Circuit Court of Appeals on 12 November 1980. My predecessor, Mr. Robert E. Owen, had been the DO reviewing official concerning the FOIA disposition of the document at issue in this litigation. Several affidavits of Mr. Owen have been filed during the course of this litigation; one on

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9 January 1979, and the other on 11 January 1980. During the course of this litigation the document at issue, marked 509-803 for identification purposes, was initially withheld in its entirety pursuant to FOIA exemptions (b)(1), (b)(2) and (b)(3). During a review connected with Mr. Owen's affidavit of 11 January 1980, a determination was made that portions of the document were no longer exempt from release as a result of disclosures that had recently been made in connection with Congressional hearings. Effective with the Order of the Circuit Court of Appeals on 12 November 1980, all filing instructions previously withheld and deleted from the released version of the document were reinserted in the releasable version. Additionally, all classification markings and related information control markings which had been deleted from the releasable version of the document, as part of the declassification process, were reinserted in the document and then marked to show that the classification designations are no longer appropriate. The newly revised version of the document was provided the plaintiff. (CIA Exhibit A).

3. On the basis of my review of the document at issue, in connection with this affidavit I have determined that one additional modification of the document is necessary. The word "City" has been reinserted in those portions previously marked "B" on the second page in the first line of the text, on page 3, in the second and fourth lines of paragraph 4, and in the third line of paragraph 5. The CIA concern over public acknowledgment of the existence of CIA stations or other facilities in specified foreign locations is real. In

most circumstances, some damage to the official relations between the United States and the named country is predictable. In the case of the acknowledgment of the existence of a CIA station in Mexico City in 1963, it has been alleged or referred to in a number of forums and publications, semi-official and official, including accidental disclosure in CIA documents released under the FOIA. Consequently, withholding the same information in this document can no longer be justified. A copy of the document with "City" reinserted is attached as CIA Exhibit B and is being forwarded to plaintiff.

4. To fulfill my official responsibilities, I have been delegated authority for original classification of information as Top Secret. I have reviewed document 509-803 and have determined that the portions which remain withheld are properly exempt from disclosure because:

a. it is currently and properly classified pursuant to Executive Order 12065 as information requiring continued protection against unauthorized disclosure to protect against damage to national security and thus exempt from release pursuant to FOIA exemption (b)(1);

b. the information reveals facts about intelligence sources and methods which the Director of Central Intelligence is responsible for protecting against unauthorized disclosure as set forth in 50 U.S.C. 403(d)(3), and which is thus exempt from release pursuant to FOIA exemption (b)(3); and

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c. the information reveals facts about CIA organization, functions, names, official titles or numbers of personnel employed, all of which are exempt from disclosure pursuant to 50 U.S.C. 403g and thus FOIA exemption (b)(3).

5. The letter markings used to identify the kind of information withheld in each instance remains basically as set forth in the affidavit of Robert E. Owen except for the reinsertion of material formerly deleted and identified as category "E" and "F"; said categories being withdrawn and previously deleted material having been reinserted pursuant to the Circuit Court Order of 12 November 1980. The remaining categories are repeated below for the Court's convenience. Additionally, more specific language has been added and underlined. The additions are possible because of the classification of this affidavit.

a. Circumstantial information which, in combination with other information, could lead to the identification of an intelligence source, /

withheld pursuant to

FOIA exemptions (b)(1) and (b)(3);

b. Circumstantial information which, in combination with other information could lead to the identification of an intelligence method used to collect intelligence information abroad, /

~~SECRET~~

withheld pursuant to

FOIA exemptions (b)(1) and (b)(3);

c. Information which is currently and properly classified in the interest of national security,

withheld pursuant

to FOIA exemptions (b)(1) and (b)(3); and

d. Information identifying CIA staff employees and organizational components, withheld pursuant to FOIA exemptions (b)(3).

6. In doing my review of the document at issue, I determined that only exempt portions have been withheld. Conversely, all segregable, non-exempt material has been released.

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13. Section 1-501 of Executive Order 12065 states what must be shown on the face of a document when it is "originally classified." This section deals with documents originated after Executive Order 12065 was effective on 1 December 1979. Such requirements could not have been imposed on classified documents already in existence such as document 509-803. Section 1-402 of the same Executive Order states:

Only officials with Top Secret classification authority and agency heads listed in Section 1-2 may classify information for more than six years from the date of the original classification. This authority shall be used sparingly. In such cases, a declassification date or event, or a date for review, shall be set. This date or event shall be as early as national security permits and shall be not more than twenty years after original classification, except that for foreign government information the date or event may be up to thirty years after classification.

As I indicated earlier, I am authorized to originally classify information at the level of Top Secret. For the purpose set forth in this affidavit, I have reviewed document 509-803 and have determined that portions of the document remain properly classified at the level of Secret. The document is properly marked to show that classification. Furthermore, the document is marked to show a date for a subsequent declassification review, and I am identified as

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the classification review authority who determines that  
classification should be extended.

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the disclosure would expose a foreign intelligence source, the information is protected by classification and 50 U.S.C. 403(d)(3) and thus exempt from disclosure pursuant to FOIA exemptions (b)(1) and (b)(3).

19. Both the CIA and the plaintiff have asserted that most of the substantive information in the document is contained in other documents that have been released to the public. This affidavit attempts to show the Court how the manner in which the information is presented in document 509-803 results in the disclosure of exempt information. I have attached copies of CIA documents in which information concerning the same substance as that being withheld has been publicly released. The documents are grouped and labeled with names to assist in making comparisons with document 509-803. The paragraphs cited are those in document 509-803.

I believe the Court will find that the withheld portions of document 509-803 do in fact disclose information concerning the intelligence sources and methods involved in addition to the intelligence substance produced. A copy of the original, unexpurgated version of document 509-803 is attached and





CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing Defendant Central Intelligence Agency's Response to Plaintiff's Requests For Admissions, Defendant Central Intelligence Agency's Answers to Plaintiff's Interrogatories and Notice of Filing to be sent to counsel for plaintiff, James H. Lesar, 2101 L Street, N.W. Suite 203, Washington, D. C. 20006 by postage prepaid mail, on this the 27th day of April, 1981.

*Dennis A. Dutterer*

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